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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,116	12/21/2001	Rod Walsh	4208-4041	7018
27123	7590	11/17/2006	EXAMINER	
MORGAN & FINNEGAN, L.L.P.			VU, THONG H	
3 WORLD FINANCIAL CENTER			ART UNIT	
NEW YORK, NY 10281-2101			PAPER NUMBER	
			2142	

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/032,116

Applicant(s)

WALSH ET AL.

Examiner

Thong H. Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. Claims 24-65 are pending.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/19/06 has been entered.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 24,28,29,31,35,39,40,42,44,48,49,51,55,59,60,62-65 are rejected because the disclosed invention is inoperative and therefore lacks utility.

“take into account the monitoring” and “account number” are not in specification.

***Claim Rejections - 35 USC § 112***

4. Claim 43,52 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

i.e: sponsored data is treated as preferable.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 24-65 are rejected under 35 U.S.C. 102(e) as being anticipated by Bruck et al [Bruck 6,691,165 B1].

5. As per claim 64, Bruck discloses An article of manufacture comprising a computer readable medium containing program code that when executed causes an apparatus to perform:

monitoring an interaction network [Bruck, detection behavior of the machine, col 18 lines 60-67; remote monitoring, col 22 lines 15-31];

selecting data, wherein selection takes into account the monitoring [Bruck, obtain the monitoring information from the display, select Edit menu and parameters set to enable monitoring of the cluster machines, col 22 lines 32-48]; and

sending the selected data over a multicast network [Bruck, multicast, col 27 line 6; the server sends data traffic, col 27 lines 25-46, Fig 16].

6. As per claim 65, Bruck discloses An article of manufacture comprising a computer readable medium containing program code that when executed causes an apparatus to perform:

providing, via an interaction network, one or more requests [Bruck, detection behavior of the machine, col 18 lines 60-67]; and

receiving, over a multicast network, selected data through a local proxy (i.e.: a server cluster or gateway), wherein selection of the data takes into account monitoring of the interaction network [Bruck, multicast, col 27 line 6; the gateway server cluster initiated or select a port assignment, col 26 lines 51-65].

7. As per claim 44, Bruck discloses An apparatus, comprising:

a memory having program code stored therein [Bruck, the server cluster software, col 8 lines 40-67]; and

a processor disposed in communication with the memory for carrying out instructions in accordance with the stored program code [Bruck, CPU and RAM, col 9 lines 7-34, Fig 6];

wherein the program code, when executed by the processor, causes the processor to perform:

monitoring an interaction network [Bruck, detection behavior of the machine, col 18 lines 60-67; remote monitoring, col 22 lines 15-31];

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selecting data, wherein selection takes into account the monitoring [Bruck, obtain the monitoring information from the display, select Edit menu and parameters set to enable monitoring of the cluster machines, col 22 lines 32-48]; and

sending the selected data over a multicast network [Bruck, multicast, col 27 line 6; the server sends data traffic, col 27 lines 25-46, Fig 16].

8. As per claim 45, Bruck discloses the multicast network is unidirectional [Bruck unicast, col 13 line 61].

9. As per claim 46, Bruck discloses the interaction network is bidirectional [Bruck, detection behavior of the machine, col 18 lines 60-67].

10. As per claim 47, Bruck discloses in monitoring the interaction network, a predetermined number of requests for a page are recognized [Bruck, predetermined limit value, col 10 line 43; provide Web page to client machine, col 28 lines 17-31], and wherein selecting the data comprises selecting a promotional file [Bruck, receiving file, col 28 lines 40-55].

11. As per claim 48, Bruck discloses selecting the data takes into account number of requests for the data [Bruck, requesting and receiving file, col 28 lines 40-55].

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12. As per claim 49, Bruck discloses selecting the data takes into account number of requests for the data that originate from a broadcast cell [Bruck selecting user actions, col 19 line 67].

13. As per claim 50, Bruck discloses selecting the data comprises prediction based on normal subsequent data choice [Bruck, menu, Fig 13].

14. As per claim 51, Bruck discloses selecting the data takes into account chance of link from requested data being followed [Bruck, available link, Fig 18].

15. As per claim 52, Bruck discloses sponsored data is treated as preferable [Bruck, preference for assignment, col 11 line 56].

16. As per claim 53, Bruck discloses the monitoring comprises employment of a network management agent [Bruck, management network, col 5 line 63].

17. As per claim 54, Bruck discloses the monitoring comprises employment of a proxy [Bruck, firewall 114, Fig 1].

18. Claims 24-34 contain the identical limitations set forth in claims 44-54. Therefore claims 24-34 are rejected for the same rationale set forth in claims 44-54.

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19. As per claim 55 Bruck discloses An apparatus, comprising:

a memory having program code stored therein [Bruck, the server cluster software, col 8 lines 40-67]; and

a processor disposed in communication with the memory for carrying out instructions in accordance with the stored program code [Bruck, CPU and RAM, col 9 lines 7-34, Fig 6];

wherein the program code, when executed by the processor, causes the processor to perform:

providing, via an interaction network, one or more requests [Bruck, detection behavior of the machine, col 18 lines 60-67; remote monitoring, col 22 lines 15-31]; and

receiving, over a multicast network, selected data through a local proxy [Bruck, multicast, col 27 line 6; gateway, col 5 line 39];

wherein selection of the data takes into account monitoring of the interaction network [Bruck, obtain the monitoring information from the display, select Edit menu and parameters set to enable monitoring of the cluster machines, col 22 lines 32-48].

20. As per claim 56, Bruck discloses the multicast network is unidirectional [Bruck, unicast, col 13 line 61].

21. As per claim 57, Bruck discloses the interaction network is bidirectional [Bruck, detection behavior of the machine, col 18 lines 60-67].



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22. As per claim 58, Bruck discloses in monitoring the interaction network, a predetermined number of requests for a page are recognized [Bruck, predetermined limit value, col 10 line 43; provide Web page to client machine, col 28 lines 17-31], and wherein selection of the data comprises selecting a promotional file [Bruck, receiving file, col 28 lines 40-55].

23. As per claim 59, Bruck discloses selection of the data takes into account number of requests for the data [Bruck, requesting and receiving file, col 28 lines 40-55].

24. As per claim 60, Bruck discloses selection of the data takes into account number of requests for the data that originate from a broadcast cell [Bruck, selecting user actions, col 19 line 67].

25. As per claim 61, Bruck discloses selection of the data comprises prediction based on normal subsequent data choice [Bruck, menu, Fig 13].

26. As per claim 62, Bruck discloses selection of the data takes into account chance of link from requested data being followed [Bruck, available link, Fig 18].

27. As per claim 63, Bruck discloses a network interface disposed in communication with the processor, wherein the apparatus is a cellular phone as inherent feature of wireless communication networks [Bruck, col 1 line 30].

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28. Claims 35-43 contain the identical limitations set forth in claims 55-63. Therefore claims 35-43 are rejected for the same rationale set forth in claims 55-63.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong H. Vu whose telephone number is 571-272-3904. The examiner can normally be reached on 6:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Thong Vu*  
*Primary Examiner*  
*Art Unit 2142*



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